SUPREME COURT OF THE UNITED STATES.

No. 276.

O. B. AND O. S. LATHAM, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM COURT OF CLAIMS.

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1 To the Court of Claims of the United States of America:

The petition of Obadiah B. Latham and Oliver S. Latham, of Seneca Falls, in the county of Seneca and State of New York, respectfully showeth that on the twenty-fifth day of July, in the year 1855, your petitioners entered into a written contract with the government of the United States for the construction of a custom-house at the city of Buffalo, in the State of New York, which contract is herewith presented as a part of this petition and is marked A.

And your petitioners further show that prior to the seventh day of April, 1856, the said government had made a written contract with one E. B. Soule for the construction and erection of a custom-house at Oswego, in the State of New York, but said Soule having failed to perform said contract, on his part, the same was declared abandoned by said government, and your petitioners were thereupon earnestly solicited by the said government to take upon themselves the execution of the said contract of said Soule, and to build and erect said custom-house at Oswego for said government. And your petitioners show that, yielding to the said solicitations of said government, through its bureau of construction, they did enter into a contract with said government to build and erect a custom-house for the said government, at Oswego aforesaid, which contract bears date the seventh day of April, 1856, a true copy whereof is hereto annexed, marked B, and is made part of this petition.

2 And your petitioners further show that they proceeded under and in pursuance of said contracts to build and erect the said custom-houses at Buffalo and Oswego, and did build and finish the same in a good and workmanlike manner and to the entire satisfaction of the said government, and the same were and each of them was accepted by the said government as finished and fully completed in the summer of 1858. And your petitioners further show that during the progress of said work and before the same was completed, the said government made divers additions, alterations, and modifications of said buildings, and of the materials to be used therein and of the work in kind and manner to be done thereon, by means whereof the cost and expense of constructing, building, and completing said two custom-houses were increased to the amount of one hundred and sixty thousand dollars, or thereabouts, inclusive of the contractors' profits, that your petitioners acceded to said additions, alterations, and modifications, and constructed said buildings in all respects according to the directions and requirements of the said government.

And your petitioners further show that before the full completion of the said custom-houses, and while your petitioners were proceeding with the performance of said contracts. to wit: on the 3d day of March, 1857, the Congress of the United States passed an act or resolution appropriating and setting apart the sum of $121,000 of the moneys of the United States for enlarging the said custom-house at Buffalo, and thereby devoting the said sum of $121,000, including 10 per cent. for incidentals, to that use and no other, and said Congress

also, in the year 1859, passed an act appropriating the sum of ten thousand dollars for the completion of said custom-house at Oswego, and which said moneys so appropriated by said acts of Congress, or at least the sum of $101,000 thereof, remained unused and unexpended on the 9th day of March, 1863, and could and should have been used and applied in payment of your petitioners, under and in pursuance of an act entitled an act for the relief of O. B. & Oliver S. Latham, passed March 3d, 1863, a copy of which is hereto annexed, and which act is hereby annexed to and made a part of this petition of your petitioners and is marked C.

3 And your petitioners further show that the moneys directed by the last-mentioned act to be paid to your petitioners was money fairly and equitably due them for work done and materials furnished in the building and completing of the said custom-houses at Buffalo and Oswego aforesaid, under said contracts and in pursuance of the directions of the said goverment, and ought and should have been paid to them in the *coin* of the United States, according to the stipulations and requirements of the said contracts.

And your petitioners further show that at the time of the making of the said several contracts and at the time of the full performance thereof by your petitioners, and at the time of the passing of said act appropriating and setting apart said moneys for the completion of the said custom-house at Buffalo, and at the time the said moneys so directed by the act of March 3d, 1863, became and were due to your petitioners from said government, the only money or currency known to or recognized by the said government of the United States was gold and silver, and that the contract aforesaid of your petitioners with the said government contemplated, both expressly and impliedly, payment to them for said work, labor, and materials bestowed and provided under said contracts, in gold and silver, and in no other currency.

And your petitioners further show, that after the passage of the said last-mentioned act of Congress, to wit: On the 9th day of March, 1863, they presented the said last-mentioned act of Congress, duly verified, to the Secretary of the Treasury of the United States, at his office and proper place of business, and required and demanded payment to them of the sum of $74,583\frac{37}{100}$, so directed and required in and by said act to be paid to them in the legal coin of the United States, and out of the said moneys so appropriated and set apart for the completion, &c., of the said custom-houses at Buffalo and Oswego, as aforesaid, but said Secretary absolutely declined and refused to make such payment in the legal coin of the United States, or out of the moneys so appropriated to the completion of said custom-houses at Buffalo and Oswego, aforesaid, and required your petitioners to take and receive for the moneys so due to them by the said act, the said sum of $74,583\frac{37}{100}$ in a paper currency of the

4 United States, commonly known as legal tender notes of the United States, at their nominal value, and declared that if they did not take said legal tender notes the said sum of $74,583\frac{37}{100}$ would not be paid to them.

And your petitioners say, that being largely indebted on account of the building and erection of said custom-houses, and being in great distress for the want of said money so due to them from said government, they did take and receive from said Secretary the said legal tender notes to the nominal amount of $\$74,583\frac{37}{100}$, and executed the usual acquittances therefor under a solemn protest that said legal tender notes were not a legal payment of said demand, a copy of which protest is hereto annexed, marked D.

And your petitioners say that at the time of the delivery to them of the said legal tender notes they were entitled to payment of their said debt in the coin of the United States, and that the passage of the act authorizing the issuing of said legal tender notes and the circulation thereof as money, did not and could not in any manner affect the rights of your petitioners, nor could it in anywise impair the obligation of the contract then existing between your petitioners and the said government of the United States.

And your petitioners further show that on the 9th day of March, 1863, and at the time when payment of said $\$74,583\frac{37}{100}$ was demanded of the said Secretary of the Treasury, the said legal tender notes were much depreciated in value, and were not equal to gold and silver in value, but on the contrary thereof, the sum of one hundred and fifty-eight dollars of said legal tender notes were worth only one hundred dollars in the legal coin of the United States, to wit, gold and silver, so that to make full payment to your petitioners according to law and the terms of said contract the said Secretary ought to and should have paid them the nominal sum in legal tender notes the sum of one hundred and twenty-one thousand eight hundred and fourteen $\frac{64}{100}$ dollars.

And your petitioners aver that they have lost, by reason of the depreciated value of said legal tender notes, and by being obliged to receive the same as payment of said $\$74,583\frac{37}{100}$, the sum of forty-seven thousand two hundred and thirty-one $\frac{37}{100}$ dollars.

They therefore pray that the said Secretary of the Treasury may, by a proper order or decree to be pronounced and entered herein, be directed and commanded to pay to your petitioners the said sum of forty-seven thousand two hundred and thirty-one $\frac{37}{100}$ dollars, and interest thereon from March ninth, 1863, to complete the payment required by said act of Congress, passed March 3d, 1863, and in full payment of the claims and demands therein specified, and that the said court may grant such other and further order or relief in the premises as may be just and agreeable to equity.

O. B. LATHAM.
O. S. LATHAM.
L. S. CHATFIELD,
Solicitor for Petitioners, No. 1, Park Place, N. Y. City.

Exhibit A.

This contract, made and entered into between James Guthrie, Secretary of the Treasury, for and on account of the United States of America, of the first part, and Obadiah B. Latham and Oliver S.

Latham, doing business under the name and style of O. B. & O. S. Latham, of Seneca Falls, New York, to whom was awarded the erection of the building authorized to be constructed at Buffalo, New York, for a custom-house, on their bid for the same, received under the advertisement of the Treasury Department of May, 3d, 1855, of the second part, witnesseth:

The parties of the second part covenant and agree to and with the party of the first part, for themselves, their heirs, or administrators, to furnish and deliver all the materials, and to do and perform all the work required to construct and complete the building to be erected at Buffalo, New York, for a custom-house, agreeably to the original drawings and specifications, under the direction of the superintendent appointed by the Secretary of the Treasury for that purpose, and in conformity to the lithographed copies of the drawings of the several parts thereof, numbered one, two, three, four, five, six, seven, eight, and nine, and the printed specifications according to the general conditions appended thereto, prepared at the office of the construction of buildings, under the Treasury Department, and dated 14th May, 1855, a copy of which is hereunto attached, which, together with the drawings aforesaid, are made a part of this
6 contract, equally binding as if more particularly incorporated herewith, the whole subject to such omissions, additions, and alterations as may be determined upon by the said party of the first part, as provided for by the "general conditions" of the specifications appended thereto, hereto annexed.

And the said parties of the second part further agree and bind themselves, their executors, administrators, and assigns, to do and complete the entire work, according to the plans and specifications as aforesaid, and to the approval and acceptance of said superintendent, to be appointed as aforesaid, and deliver the same over to the said superintendent in complete and perfect condition, conformably to the plans and specifications as aforesaid, on or before the 1st day of March, eighteen hundred and fifty-seven.

And the said party of the first part, Secretary of the Treasury as aforesaid, doth covenant, promise, and agree, well and truly to pay, or cause to be paid, unto the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of eighty-one thousand three hundred and forty-five dollars, good and lawful money of the coin of the United States, the payments to be made in the following manner, viz: ninety per cent. ($9-10) of the value of work done and materials furnished (said amount to be ascertained and duly certified to the department by the superintendent) will, in consideration of the above premises, be paid from time to time as the work progresses, and ten per cent. ($1-10) be retained until the completion of the work and its approval and acceptance, as aforesaid, by the said superintendent.

And it is further agreed, by and between the parties to these presents, that if from any cause whatsoever the said parties of the second part should fail to carry on the work with the required prompt-

ness, in the opinion of the said superintendent, to insure its completion by the time specified above, it shall become the duty of said superintendent, and he shall be and is hereby authorized and empowered, after eight days' due notice thereof, in writing, left at the shop, office, or usual place of abode of the said parties of the second part, or with their agent, without effect, to purchase and procure the necessary materials, and have the necessary work performed to supply any deficiency caused by the delinquency of the said parties of second part, and the actual cost thereof, together with fifteen per cent. thereon, shall be deducted from any moneys due or owing to the said parties of the second part, on account of this contract, and if there is not that amount due them thereon, their bondsmen are to be held liable for any deficiency, to be recovered of them by suit in the name of the United States.

It is further agreed and understood by the parties hereto, that whatever style of cutting is adopted for the stone of the eastern walls, it is to be executed in the best manner of that style, and to the entire satisfaction of the superintendent.

It is also covenanted and agreed by and between the parties to this contract, that the parties of the second part shall execute,
7 with two or more sufficient sureties, a bond to the United States in the sum of twenty thousand dollars, conditioned for the faithful performance of this contract, and the agreements and covenants herein made by the parties of the second part.

It is also covenanted, agreed, and understood, that no member of Congress, or other person, whose name is not at this time disclosed, shall be admitted to any interest in this contract.

It is further covenanted and agreed by the parties hereto, that this contract shall not be assigned, except by consent of the Secretary of the Treasury, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same, and shall subject the said parties of the second part, and their bondsmen, to such damages, to be recovered of them by suit in the name of the United States, as shall have been suffered by the said party of the first part.

It is also covenanted and agreed by and between the parties hereto, that in case any additions, omissions, or alterations are determined upon, the same shall be specifically noted hereon, and the amount to be paid or deducted therefor agreed upon and stated.

It is also covenanted and agreed by and between the parties hereto, that if any materials shall be delivered on the site of the said custom-house, by the parties of the second part, and estimated, and a percentage paid thereon, by the party of the first part, before they are put in the building, they shall become the property of the United States, and being delivered to the superintendent, shall be worked into the building as it progresses.

In witness whereof the said James Guthrie, Secretary of the Treasury as aforesaid, for and in behalf of the United States, hath hereunto subscribed his name and caused the seal of the Treasury Department to be hereunto affixed; and the said O. B. & O. S. Latham

have also subscribed their names and affixed their seals, this 25th day of July, 1855.

JAMES GUTHRIE.
O. B. & O. S. LATHAM. [L. S.]

In the presence of—
R. F. MORGAN.
A. H. BOWMAN, *Engineer in charge T. D.*

Exhibit B.

This contract made and entered into between James Guthrie, Secretary of the Treasury, for and on account of the United States of America, of the first part, and O. B. & O. S. Latham, assignees of Edwin B. Soule, of Oswego, New York, to whom was awarded the erection of the building authorized to be constructed at Oswego, New York, for a custom-house, post office, &c., on his bid for the same, received under the advertisement of the Treasury Department of 13th April, 1855, of the second part, witnesseth:

8 The parties of the second part covenant and agree to and with the party of the first part, for themselves, their heirs, or administrators, to furnish and deliver all the materials, and do and perform all the work required to construct and complete the building to be erected at Oswego, New York, for a custom-house, post office, &c., agreeably to the original drawings and specifications, under the direction of the superintendent to be appointed by the Secretary of the Treasury for that purpose, and in conformity to the lithographed copies of the drawings of the several parts thereof, numbering one, two, three, four, five, six, seven, eight, and nine, and the printed specifications, according to the general conditions appended thereto, prepared at the office for the construction of buildings, under the Treasury Department, and dated April 13th, 1855, a copy of which is hereunto attached, which, together with the drawings aforesaid, are made a part of this contract, equally binding as if more particularly incorporated herewith, the whole subject to such omissions, additions, and alterations as may be determined upon by the said party of the first part, as provided for in the "general conditions" of the specificatons hereto annexed.

And the said parties of the second part further agree and bind themselves, their executors, administrators, and assigns, to do and complete the entire work, according to the plans and specifications as aforesaid, and to the approval and acceptance of said superintendent, to be appointed as aforesaid, and deliver the same over to the said superintendent in complete and perfect condition, conformably to the plans and specifications aforesaid, on or before the 30th of September, eighteen hundred and fifty-seven.

And the said party of the first part, Secretary of the Treasury as aforesaid, doth covenant, promise, and agree, well and truly to pay, or cause to be paid, unto the said parties of the second part, their heirs, executors, administrators, or assigns, the sum of seventy-seven

thousand two hundred and fifty-five ($77,255) dollars, good and lawful money of the coin of the United States, the payments to be made in the following manner, viz: ninety per cent. ($9-10) of the value of work done and materials furnished (said amount to be ascertained and duly certified to the department by the superintendent) will, in consideration of the above premises, be paid from time to time as the work progresses, and ten per cent. ($1-10) be retained until the completion of the work, and its approval and acceptance, as aforesaid, by the said superintendent.

And it is further agreed, by and between the parties to these presents, that if, from any cause whatsoever, the said parties of the second part should fail to carry on the work with the required promptness, in the opinion of the said superintendent, to insure its completion by the time specified above, it shall become the duty of said superintendent, and he shall be and is hereby authorized and empowered, after eight days' due notice thereof, in writing, left at the shop, office, or usual place of abode of the said parties of the second part, or with their agent, without effect, to purchase and procure the necessary materials, and have the necessary work performed to supply any deficiency caused by the delinquency of the said parties of the second
9 part, and the actual cost thereof, together with fifteen per cent. thereon, shall be deducted from any moneys due or owing to the said parties of the second part, on account of this contract, and if there is not that amount due them thereon, their bondsmen are to be held liable for any deficiency, to be recovered of them by a suit in the name of the United States.

It is also covenanted and agreed by and between the parties to this contract that the parties of the second part shall execute, with two or more sufficient sureties, a bond to the United States, in the sum of fifteen thousand dollars, ($15,000,) conditioned for the faithful performance of this contract, and the agreements and covenants herein made by the parties of the second part.

It is also covenanted, agreed, and understood, that no member of Congress, or other person whose name is not at this time disclosed, shall be admitted to any interest in this contract.

It is further covenanted and agreed, by the parties hereto, that this contract shall not be assigned, except by consent of the Secretary of the Treasury, and that any assignment thereof, except as aforesaid, will be a forfeiture of the same, and shall subject the said parties of the second part, and their bondsmen, to such damages, to be recoved of them by suit in the name of the United States, as shall have been suffered by the said party of the first part.

It is further agreed and understood that the stone to be used shall be the Cleveland white stone, of the best quality, and whatever style of cutting is adopted it is to be executed in the best manner of that style, and to the approval and entire satisfaction of the superintendent.

It is also covenanted and agreed, by and between the parties hereto, that in case any additions, omissions, or alterations are determined upon, the same shall be specifically noted hereon, and the amount to be paid or deducted therefor agreed upon and stated.

It is also covenanted and agreed, by and between the parties hereto, that if any materials shall be delivered on the site of the said custom-house, post office, &c., by the parties of the second part, and estimated, and a percentage paid thereon, by the party of the first part, before they are put in the building, they shall become the property of the United States, and being delivered to the superintendent, shall be worked into the building as it progresses.

In witness whereof, the said James Guthrie, Secretary of the Treasury as aforesaid, for and in behalf of the United States, hath hereunto subscribed his name, and caused the seal of the Treasury Department to be hereunto affixed; and the said O. B. & O. S. Latham, of Seneca Falls aforesaid, and have also subscribed their names and affixed their seals, this 7th day of April, 1856.

[SEAL.] JAMES GUTHRIE.

O. B. & O. S. LATHAM. [L. S.]

In the presence of—
A. FAILING.
As to the Secretary—
R. F. MORGAN.

10 37th Congress, 3d session.—H. R. 111.

Exhibit C.

In the Senate of the United States.—February 15, 1863, read twice and referred to the Committee on Claims.

February 27, 1863.—Reported by Mr. Clark with an amendment, viz: Strike out the words within [brackets] and insert those printed in *italics.*

An act for the relief of O. B. & O. S. Latham.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and is hereby, authorized and required to pay to Obadiah B. Latham and Oliver S. Latham, out of moneys heretofore appropriated and remaining unexpended for the erection and enlargement of the custom-houses at Buffalo and Oswego, in the State of New York, the sum of [one hundred thousand two hundred and eight dollars and fifty-nine cents,] *seventy-four thousand five hundred and eighty-three dollars and thirty-seven cents,* in full of their claim for moneys due them for the erection and enlargement of said buildings, and of all claims of whatever nature by them for work and materials bestowed on said buildings, and all matters connected therewith: *Provided,* That if there is not a sufficient amount remaining unexpended, as aforesaid, to pay the whole of the said sum, that then the said Secretary is hereby authorized and required to pay the balance of said sum out of any moneys in the treasury not otherwise appropriated.

Passed the House of Representatives February 14, 1863.

Attest: EM. ETHERIDGE, *Clerk.*

Exhibit D.

To the Secretary of the Treasury of the United States:

SIR: By the terms of our several contracts with the government of the United States for the construction, enlargement, and completion of the United States custom-houses at Buffalo and Oswego, the government is required to pay us in the *coin* of the United States for said work.

These contracts have been affirmed by the Court of Claims, and the recent act of Congress for the relief of O. B. & O. S. Latham refers to them.

11 We therefore insist that we are entitled to *coin* in the payment of the sum of $74,583 37 allowed us by said act of Congress and in receiving the treasury notes of the government in payment, we do so because the government has, on our application for *coin*, refused to pay us in *coin;* and we protest that said payment is not according to said contracts, and that in receiving treasury notes we do not intend to surrender or release our right to claim and receive payment in money which shall be equal to the *coin* of the United States at this day.

O. B. & O. S. LATHAM.

Washington, March 6, 1863.

Obadiah B. Latham and Oliver S. Latham, the above-named petitioners, being duly and severally sworn, depose and say, and each for himself, says that the foregoing petition is in all respects true as they verily believe. That they, the petitioners, have made no assignment or transfer of their said claim, any part thereof, or any interest therein, except as mentioned in said petition, and that they are justly and equitably entitled to the amount claimed in said petition, from the United States, after allowing all just credits and offsets, that they have at all times borne true allegiance to the government of the United States, and have not in any way voluntarily aided, abetted, or given encouragement to rebellion against said government, and that they are citizens of the United States.

O. B. LATHAM.
O. S. LATHAM.

Before me personally appeared Obadiah B. Latham and Oliver S. Latham, the petitioners named in the above petition and the affidavit attached thereto, who being by me severally duly sworn, each for himself, deposes and says that the facts stated in the foregoing petition and affidavit are true, to the best of his knowledge and belief.

Dated at Seneca Falls, N. Y., this 3d day of Sept., 1863.

HIRAM A. PALMER,
Justice of the Peace in and for Seneca County, N. Y.

12

13 In the Court of Claims.—No. 1,967.—October term, 1864.

O. B. and O. S. LATHAM
vs.
THE UNITED STATES.

And now come the United States, by Charles Gibson, their solicitor, and say that they are not indebted unto the said claimant in the said sum of $47,231 37-100, or any part thereof.

CHARLES GIBSON,
Solicitor for the U. S.

Jan. 11, 1864.

14 In the Court of Claims.

O. B. and O. S. LATHAM
vs.
THE UNITED STATES.

And now, to wit, March 6, 1865, the court, upon due consideration of the premises, do order, adjudge, and decree that the said claimants take nothing by their suit, and that the said petition be dismissed.

By the court.

15 In the Court of Claims.

OBADIAH B. LATHAM and OLIVER S. LATHAM
vs.
THE UNITED STATES.

The claimants pray an appeal to the Supreme Court of the United States from the judgment of the Court of Claims in this cause, rendered on the 6th day of March, 1865; and they pray the court to certify the following facts to the Supreme Court:

1. That the two contracts set forth in the petition, marked exhibits A and B, for the erection of the custom-houses at Oswego and Buffalo, were duly executed by the claimants and by the Secretary of the Treasury; and the said Secretary acted therein, and in all other matters respecting the construction of said buildings, by the authority and in behalf of the United States.

2. That after the execution of said contracts and during the progress of the work, the Secretary of the Treasury enlarged one of the buildings, and in both directed several changes and deviations from the plans and specifications prescribed by the contract, and the work was executed by the claimants in conformity with the directions so given them by the said Secretary.

3. That for the said enlargement and for certain of the alterations so directed by the said Secretary, the said Secretary made compensation to the claimants.

4. That for certain other of the alterations the said Secretary refused to make compensation to the claimaints; and that to recover compensation for the extra work in said alterations so done and not paid for, and for the increased expense occasioned by said departures from the plans and specifications, the claimants, on the 3d day of June,

1859, brought suit in the Court of Claims by filing therein the petition hereto annexed and marked exhibit I; and on the 5th
16 day of May, 1862, the Court of Claims made a decision in favor of the claimants, hereto annexed and marked exhibit 2, finding due them the sum of $36,440 94, and thereafter reported the same to Congress with a bill for their relief.

5. That Congress, on the 3d day of March, 1863, passed the act set forth in the petition in this cause, marked exhibit C, directing the payment to the claimants of the sum of $74,583 77, out of the appropriations theretofore made, for the construction and enlargement of the custom-houses at Buffalo and Oswego, New York; and that on the 3d day of March, 1863, and until the 9th day of March, 1863, there remained in the treasury balances of the said appropriations, amounting to $85,107 77.

6. That on the 6th day of March, 1863, the claimant demanded of the Secretary of the Treasury payment of the said sum of $74,583 77, in lawful money of the coin of the United States; and the Secretary of the Treasury refused to pay the said sum in coin, or otherwise than in United States treasury notes authorized to be issued by the act of 25th of February, 1862; and the claimants refused to receive the same otherwise than under protest, and the said Secretary agreed to pay the same notwithstanding such protest.

7. That on the 9th day of March, 1863, the claimants made and filed with the Secretary of the treasury the protest set forth in the petition in this cause and marked exhibit D, and thereafter on the same day received from the treasury the sum of $74,583 77 in treasury notes, issued under the act of February 25, 1862.

8. That on the said 9th day of March, 1863, coin to the amount of $74,583 37 was worth in such treasury notes $118,214 63; and such treasury notes to the amount of $74,583 77 were worth in coin $47,-054 74.

And the claimants further pray this court to certify that upon the facts hereinbefore set forth, this court ruled—

1. That the covenant in the contracts in the said petition set forth, to make payment in "lawful money of the coin of the United States," did not apply to the work done not according to the original specifications, but in conformity with directions from the Treasury Department, requiring alterations and deviations from the original specifications.

17 2. That the amount found due to the claimant by this court in its decision made on the 5th day of May, 1862, was not due under the special contracts set forth in the petition in this cause, but under an implied contract founded upon the performance of the work at the request of the Secretary of the Treasury; and that the provision of the special contracts so set forth requiring payment in lawful money of the coin of the United States, did not apply to the amount so found due.

3. That the amount of money directed to be paid by the act of Congress, set forth in the petition in this cause, was not due under the special contracts set forth in said petition, and that these claim-